



JOHN A. OLSZEWSKI, JR.
County Executive

KELLY MADIGAN
*Executive Director
Ethics Commission*

March 30, 2020



Re: Exception to County Ethics Code Section 7-1-305

Dear [REDACTED]

We are in receipt of your email letter to the Ethics Commission dated March 28, 2020, a copy of which is attached to this response. In your letter, you detailed the extreme and unprecedented crisis which has been created as a result of the global COVID-19 pandemic. Baltimore County is not immune from the impact of the virus. You noted that while Baltimore County is making every effort to respond fully to the crisis, resources have been stretched to the limits and the County has created the Baltimore County COVID-19 Relief Fund (the "Fund") which will support relief efforts in the County. You noted that the [REDACTED] made a donation to the Fund without being solicited to do so. At the same time, many local businesses have inquired how they can also be of help. In order to maximize the donations to the Fund, you have asked the Baltimore County Ethics Commission (the "Commission") to exercise the authority it has under Section 7-1-305 (e) of the Baltimore County Code (2015) (the "Code") to make an exception to the prohibitions contained in Section 7-1-305 (a) and (b) dealing with solicitation of and acceptance of gifts. In this way, certain County officials will be permitted to both inform individuals, companies and other organizations that they can help by supporting the Fund and may actually solicit individuals, companies and other organizations to donate to the Fund.

In a further response to a discussion you had on Sunday with Kelly Madigan, you provided an email containing some additional details about the request and who would be authorized to make the solicitations. Attached to this letter is a copy of your response. Essentially, you have clarified that there are two distinct solicitations that are contemplated. One is financial (money) and one is in kind contributions (PPE, services, etc.) At our invitation, you called in to the emergency conference call with the Commission this morning and clarified that the financial contributions which are solicited will be given directly to the Baltimore Community Foundation, a non-government 501 (c)(3) organization, which currently manages approximately \$173,000,000 in assets and has several prominent community leaders on its board, including former [REDACTED] and others. You noted that this group is more suited to the acquisition and distribution of funds. The second solicitation will be for the in-kind gifts. Those solicitations will ask that the gifts be delivered

directly to Baltimore County (such as the Health Department for masks and other PPE). Accordingly, your requests for an exception to the Code sections prohibiting solicitation will encompass the solicitation of money and in-kind gifts, but the acceptance of the gifts by the County will only be the in-kind gifts. Nevertheless, the Commission believes that to the extent that the acceptance of a gift prohibition would cover acceptance by a non-governmental third party when the solicitation was made by a County official, our exception will cover receipt of solicited funds by the Baltimore Community Foundation.

The Commission has considered this request at an emergency teleconference on Monday, March 30, 2020, and we have crafted a temporary exception to the prohibition against solicitation and acceptance of gifts found in Section 7-1-305 (a) and (b).

The Code provides the following prohibitions:

§ 7-1-305. - SOLICITATION OR ACCEPTANCE OF GIFTS.

(a) Solicitation of gifts prohibited

- (1) A public official may not solicit any gift.
- (2) A public official may not directly solicit or facilitate the solicitation of a gift, on behalf of another person from an individual regulated lobbyist.

(b) Acceptance of gifts prohibited. Except as provided in subsection (c) of this section, a public official may not knowingly accept a gift, directly or indirectly, from an entity that the public official knows or has reason to know:

- (1) Does or seeks to do any business of any kind, regardless of amount, with the public official's office, agency, board, or commission;
- (2) Engages in an activity that is regulated or controlled by the public official's office, agency, board, or commission;
- (3) Has a financial interest that may be affected substantially and materially, in a manner distinguishable from the public generally, by the performance or nonperformance of the public official's official duties; or
- (4) Is a regulated lobbyist with respect to matters within the jurisdiction of the public official.

These prohibitions are most likely meant to prohibit a public official from soliciting or accepting gifts for himself or herself. Nevertheless, the language of the Code section is such that the Commission believes that under normal circumstances, it would be improper for a public official to solicit gifts - even those which would be made to the County - because it may appear to the person being solicited that if the gift is given, he may later feel entitled to call upon the official to provide him with more favorable rulings or contract awards in dealings he has with the

County. Conversely, the person being solicited may feel that if the gift is not given, he may suffer retribution in one form or another, with preferential treatment being given only to those who did respond with a gift. Nevertheless, with proper safeguards and a narrowly constructed temporary exception, the Commission believes that the County's ability to respond to the COVID-19 crisis warrants that an exception be made. With these factors in mind, the Commission, acting under the authority granted in Code section 7-1-305 (e), grants the following exception to the prohibitions against solicitation and acceptance of gifts by the County.

1. The County must designate a specific "team" of persons who are authorized to make solicitations on behalf of the County. This team should be limited to as few people as are necessary and must be comprised of senior level personnel only in order to avoid line level employees from feeling pressured to make solicitations. The list of people comprising the team must be given to the Commission and must be made public on the County's COVID-19 Response web page. Notice of changes to the composition of the team must also be given to the Commission and must be made public on the County's COVID -19 Response web page.

2. A detailed list of all solicitations which are made shall be maintained by the County and provided to the Commission on a weekly basis. However, this list SHALL NOT be made public because the Commission believes that there would be adverse consequences of embarrassment or negativity in the eyes of the public if it is made known that a person, company or organization who was solicited declined to provide a gift. This exception is not designed to put anyone in a bad light, and it is important to safeguard that goal in permitting an exception to the "no solicitation" ethics law. The list must therefore be kept under seal and not be subject to Public Information Act ("PIA") disclosure. The County Attorney should provide a directive to the office maintaining the list of solicitations, citing the exception to the PIA provisions which would apply in this circumstance.

3. Recognizing that gifts can be in the form of money or goods and service, all gifts (both monetary donations and donations of materials, supplies or other services or items - e.g. face masks, gloves, delivery services, etc.) given by any person, company or organization, both in response to a solicitation and those given *sua sponte*, must be listed by date, amount of gift and donor, and a log of all such gifts must be given to the Commission on a weekly basis and listed on the County's COVID-19 Response web page. We recognize that you may not become aware of the exact gifts made to the Baltimore Community Foundation because people or organizations which are solicited by County officials will not necessarily report how much they gave to the Baltimore Community Foundation and the Baltimore Community Foundation may not even know when a donation was made in response to a solicitation by a County official. Thus, we would expect the County to use its best efforts from the information it has in hand to report donations made as a result of solicitations made by County officials. We do not expect the County to do follow ups to see who may have given and what amounts.

4. The Commission wants to make clear that under no circumstances is pressure to be applied in the solicitation of gifts for the COVID-19 Response Fund. That is, if a person being solicited expresses that he, she or it does not want to (or cannot) participate in the COVID-19 Response program, the team member doing the soliciting must thank the person for his or her time and the solicitation MUST end. The Commission does not want people to feel that if they do not or cannot make a gift, there will be any negative repercussions of any kind.

5. This exception is an extraordinary measure taken to address extraordinary times. The Commission wants to make known that the definition of the COVID-19 crisis for which this exception is being granted will not include long term budget deficits. Rather, this exception is designed to last only as long as the immediate COVID-19 crisis exists as a community wide crisis. Therefore, this exception will remain in effect for three months or until Governor Hogan and County Executive Olszewski lift all “shut down” orders, restrictions on public gatherings and shelter in place or other self-quarantine recommendations, whichever occurs first. However, if the restrictions are not lifted by June 30, 2020, the Commission stands ready to extend the term of this exception on an as needed basis.

Permission given orally to have this document signed by:

Jeffrey Forman, Chairman

March 30, 2020

G. Darrell Russell, Commission Member

March 30, 2020

Cindy Leppert, Commission Member

March 30, 2020

Michael Lawlor, Commission Member

March 30, 2020

Lee Jacobson, Commission Member

March 30, 2020 – via email